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SYNOPSYS, INC.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SYNOPSYS, INC.,

Plaintiff,

v.

UBIQUITI NETWORKS, INC., UBIQUITI
NETWORKS INTERNATIONAL LIMITED,
CHING-HAN TSAI, and DOES 1-20,
inclusive,

Defendants.

Case No. 3:17-cv-00561-WHO-LB

**SYNOPSYS' RESPONSE TO
DEFENDANTS' SUPPLEMENTAL
BRIEF RE EXTRATERRITORIALITY
OF 17 U.S.C. § 1201(a)(1)**

Date: January 18, 2018
Time: 9:30 a.m.
Dept. Courtroom C, 15th Floor
Judge: Hon. Laurel Beeler

UBIQUITI NETWORKS, INC. AND
UBIQUITI NETWORKS INTERNATIONAL
LIMITED,

Counterclaimants,

v.

SYNOPSYS, INC.,

Counterdefendant.

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1 I. INTRODUCTION

2 Synopsis seeks to forensically inspect the computers Defendants used to pirate
3 Synopsis' software. Defendants' sole argument against the requested inspection is that
4 computers in Taiwan are not relevant to Synopsis' DMCA § 1201(a)(1) claim because the
5 Copyright Act generally does not apply abroad. Dkt. 105, Defendants' Supplemental Brief
6 ("Supp. Br.") at 4:27-5:12. Defendants' extraterritoriality argument is wrong, but more
7 importantly, it is a red herring for two reasons. First, Defendants concede that at least two
8 Ubiquiti employees gained access within the United States to Synopsis' software hosted on
9 Defendants' devices in Taiwan. Application of the DMCA to these U.S.-based acts is a domestic
10 application of the statute. Because it is undisputed that Defendants' devices in Taiwan facilitated
11 domestic DMCA violations, discovery of the subject devices is relevant even if the DMCA does
12 not apply to "wholly extraterritorial" conduct. Likewise, computers belonging to Defendants'
13 Taiwan-based employees that could have been transported to (or remotely accessed from) the
14 U.S. are subject to discovery notwithstanding Defendants' extraterritoriality argument.

15 Second, Defendants ignore Synopsis' five additional claims—independent of its DMCA
16 § 1201(a)(1) claim—that justify the requested forensic discovery. Synopsis asserts claims for
17 trafficking in circumvention technology (17 U.S.C. § 1201(a)(2) & 1201(b)), trafficking in
18 counterfeit software labels (18 U.S.C. § 2318), trafficking in counterfeit access devices (18
19 U.S.C. § 1029), and fraud, all of which involve Defendants' Taiwan computers. Defendants
20 have not made any extraterritoriality arguments regarding these claims, nor can they.

21 II. RELEVANT FACTUAL BACKGROUND

22 Synopsis' claims all arise from Defendants' trafficking and use of counterfeit license keys
23 to pirate Synopsis' software. Synopsis seeks forensic discovery of three categories of devices:
24 (1) devices that Defendants used to host Synopsis' software and license keys for remote access;
25 (2) devices that Defendants' employees used to access Synopsis software; and (3) devices
26 belonging to Defendant Tsai.¹ Defendants' statement that Synopsis seeks "hundreds and
27

28 ¹ Tsai's devices were not at issue when the parties submitted their initial joint letter brief, because the parties had already agreed to inspection of the devices on a date in late December 2017. Dkt. 99 at 4, n.2. But Defendants reneged on their agreement at the eleventh hour, citing the Court's

1 hundreds of Defendants’ computers” (Supp. Br. at 3, n.1) is false, as Synopsys only seeks
2 inspection of the specific devices used to access Synopsys’ software.²

3 Synopsys’ Second Amended Complaint (“SAC”) alleges that Defendants “set up networks
4 of computers that permitted persons to remotely access counterfeit keys...and unauthorized and
5 counterfeit copies of Synopsys’ software from multiple workstations connected to the Internet
6 and to shared IT infrastructure via IP addresses, domains, and subdomains owned and/or
7 controlled by Ubiquiti and UNIL.” SAC ¶ 59. Defendants’ supplemental brief and supporting
8 declarations establish that these allegations are true: “the entire team” of Ubiquiti and UNIL
9 employees working on Ubiquiti’s semiconductor design project had “access to two shared
10 username accounts on UNIL’s computer system,” and the computers Defendants set up to host
11 Synopsys’ software and license keys were “remotely accessed by ASIC design team members
12 using their individual laptops and computers.” Supp. Br. at 4:2-3; 4:10-14. Critically,
13 Defendants concede that Ubiquiti employees engaged in the conduct described in SAC ¶ 59 *from*
14 *within the U.S.* Tsai Decl., Dkt. 105-5 ¶¶ 15-17; Wang Decl., Dkt. 105-18 ¶6.

15 The SAC further alleges that Defendants “configured computers so that Synopsys’
16 applications and counterfeit license keys were accessible from a virtual machine” that could be
17 “transported and used in and outside of California.” SAC ¶ 62. This allegation also finds support
18 in Defendants’ recent submissions. Although Defendants previously told the Court under penalty
19 of perjury that UNIL conducted no business activities whatsoever in California or the United
20 States,³ Defendants now admit that UNIL employees with access to Synopsys’ software did
21 indeed travel to California and other U.S. locations during the relevant time period.
22 Conveniently, these employees “do not recall” whether they used Synopsys’ software while they
23

24 December 22, 2017 order as authority for dictating to Synopsys an unreasonable protocol
designed to hamstring Synopsys’ experts and force waiver of work product protection.

25 ² Synopsys will not address seriatim Defendants’ immaterial misrepresentations about the meet
26 and confer history underlying this discovery dispute, but notes that it has been attempting to
negotiate a compromise on forensics for many months. Defendants have been dilatory at every
27 step and have now reneged on the one compromise that the parties were able to agree on.

28 ³ Dkt. 25-1; *see also* Dkt. 25 at 1 (“it is [] not true that UNIL conducts or has conducted business
within this state”) June 14, 2017 Hr’g Tr. 6:7-15 (counsel vouching that “UNIL has nothing
happening in the United States.”).

1 were in the U.S. on company business. Dkt. 105-15 ¶ 5 (discussing U.S. trip to visit “silicon IP
2 vendor”); Dkt. 105-5 ¶ 16 (discussing visit to “silicon IP vendor’s headquarters near San Jose”);
3 Dkt. 105-10 ¶ 5; Dkt. 105-13 ¶ 5. Combined with Synopsys’ call-home data showing
4 circumvention carried out from computers with U.S. IP addresses, U.S. travel by Defendants’
5 employees amply justifies discovery of the subject devices. Forensic discovery is especially
6 important given Defendants’ alteration of evidence after Synopsys confronted them about their
7 rampant piracy. Dkt. 85-1 ¶17 (discussing Tsai’s reconfiguration of IT systems).

8 **III. LEGAL STANDARD**

9 The Court’s analysis in *Goes Int’l, AB v. Dodur Ltd.*, 2016 U.S. Dist. LEXIS 13748, at *4-
10 7 (N.D. Cal. Feb. 4, 2016) applies with full force here:

11 It is important to recall exactly what is before the court. This is a discovery
12 motion. It is not a dispositive motion on the merits of the plaintiff’s claim. The
13 plaintiff is not limited to admissible evidence; it need not prove its claim. The
14 plaintiff must show only that, given its claim, the requested discovery is relevant
15 and proportional to the needs of this case. *See* Fed. R. Civ. P. 26(b)(1).
16 “Information . . . need not be admissible in evidence to be discoverable.” *Id.* In
17 deciding whether the plaintiff has made that showing, the court can consider even
18 inadmissible evidence. *Cf.* Fed. R. Evid. 104...

16 The court cannot reach a substantive decision — especially one of such potentially
17 broad consequence— without fuller factual development using admissible
18 evidence, and legal argument specifically directed to, and elaborated on the basis
19 of, that fuller proof...

18 Rule 26(b)(1) of the Federal Rules of Civil Procedure describes the basic scope of
19 discovery — i.e., what information parties can rightly demand from one another:

20 Parties may obtain discovery regarding any nonprivileged matter
21 that is relevant to any party’s claim or defense and proportional to
22 the needs of the case, considering the importance of the issues at
23 stake in the action, the amount in controversy, the parties’ relative
24 access to relevant information, the parties’ resources, the
25 importance of the discovery in resolving the issues, and whether
26 the burden or expense of the proposed discovery outweighs its
27 likely benefit....

24 (citing Fed. R. Civ. P. 26).

25 **IV. ARGUMENT**

26 Defendants’ brief adds nothing of substance to the extraterritoriality argument that this
27 Court and Judge Orrick have already rejected. Dkt. 104 at 4. Defendants’ brief fails to discuss
28 the only two cases that contain reasoned analysis of the DMCA’s extraterritoriality,

1 mischaracterizes the state of the law regarding cross-border copyright infringement, and does not
2 even attempt to apply the two-step extraterritoriality analysis required by *RJR Nabisco, Inc. v.*
3 *European Cmty.*, 136 S. Ct. 2090, 2100-01 (2016).

4 Moreover, although Synopsys noted in its section of the parties' joint letter that
5 Defendants' section 1201(a)(1) extraterritoriality argument is a complete red herring because
6 other claims justify forensic discovery of computers in Taiwan, Defendants' brief makes no
7 attempt to address any of these claims.⁴ The requested forensic discovery is indisputably
8 relevant to Synopsys' (i) fraud claim, which arose in the U.S.; (ii) DMCA trafficking claims,
9 which assert manufacture and importation of circumvention technology, *see Synopsys, Inc. v.*
10 *Ubiquiti Networks, Inc.*, 2017 U.S. Dist. LEXIS 130070, at *23-24 (N.D. Cal. Aug. 15, 2017)
11 (discussing trafficking claims); (iii) counterfeit label trafficking claim under 18 U.S.C. § 2318, a
12 statute that applies if "a facility of interstate *or foreign* commerce is used or intended to be used
13 in the commission of the offense" (emphasis added); and (iv) counterfeit access device claim
14 under 18 U.S.C. § 1029, a statute that expressly applies to persons "outside the jurisdiction of the
15 United States." These claims all involve Defendants' activity, conducted between the U.S. and
16 Taiwan, to carry out the alleged violations and all justify Synopsys' demand for inspection.

17 **A. Computers in Taiwan Are Relevant to Domestic DMCA § 1201(a)(1) Claims**

18 The Supreme Court has established a two-step framework for analyzing whether a case
19 involves impermissible extraterritorial application of U.S. law:

20 At the first step, we ask whether the presumption against extraterritoriality has
21 been rebutted—that is, whether the statute gives a clear, affirmative indication
22 that it applies extraterritorially...If the statute is not extraterritorial, then at the
23 second step we determine whether the case involves a domestic application of the
statute, and we do this by looking to the statute's "focus." If the conduct relevant
to the statute's focus occurred in the United States, then the case involves a
permissible domestic application even if other conduct occurred abroad...

24 *RJR Nabisco*, 136 S. Ct. at 2101. The DMCA's text, legislative history, and purpose are
25 sufficient to rebut the presumption against extraterritoriality under step one of the *RJR Nabisco*

26 ⁴ Because parties cannot raise a new issue for the first time in their reply briefs, Defendants have
27 waived any arguments regarding the relevance of the subject computers to Synopsys' other
28 claims. *See, e.g., Dytch v. Yoon*, 2011 WL 839421, at *3 (N.D. Cal. 2011) (collecting cases).
Likewise, Defendants have waived their conclusory undue burden objection, which is not
supported by any factual showing despite Defendants' deluge of declarations.

1 analysis.⁵ But step-one analysis is immaterial to this discovery dispute, because the second step
2 of the *RJR Nabisco* analysis is dispositive.

3 Courts have yet to apply *RJR Nabisco*'s two step analysis to the DMCA. Synopsys is
4 aware of only two cases that contain reasoned analysis of the DMCA's extraterritoriality, and
5 they are both from the Northern District of California. *See Doe v. Geller*, 533 F. Supp. 2d 996,
6 1004 (N.D. Cal. 2008) ("*Geller*"); *Automattic Inc. v. Steiner*, 82 F. Supp. 3d 1011, 1017 (N.D.
7 Cal. 2015) ("*Steiner*").⁶ Although these cases both predate *RJR Nabisco*, their reasoning is
8 consistent with *RJR Nabisco*'s step-two "focus" inquiry and supports Synopsys' position here.

9 First, in *Geller*, Judge Walker considered a takedown notice sent from a party abroad to
10 YouTube's California offices concerning a video posted by a YouTube user in Pennsylvania.
11 The plaintiff argued that copyright "authorization" case law such as *Subafilms* (note 7, *supra*)
12 should control the analysis, but Judge Walker held "that body of case law is inapposite" because
13 it is rooted vicarious liability and the derivative relationship between direct and indirect
14 copyright infringement. *Geller*, 533 F. Supp. 2d at 1004. After noting that "copyright law is
15 especially unsettled when it comes to cross-border communications" Judge Walker concluded
16 that "copyright law does not provide a satisfactory answer whether United States courts have
17 jurisdiction over cross-border communications in § 512(f) suits." *Id.* at 1003-04.

18 Second, in *Steiner*, Judge Spero analyzed a claim by a blogger in London who posted an
19 article on a website hosted by a company in California. A foreign defendant sent a DMCA
20 takedown notice to the California company falsely claiming that that the blogger's post infringed
21 its copyrights. The California company and the blogger both sued the defendant under DMCA §

22 ⁵ This is so *inter alia* because the DMCA creates rights distinct from traditional copyright rights,
23 prohibits importation of circumvention technology, and is based on a legislative history replete
24 with references to a need for global protection of U.S. copyrighted works in the digital
25 marketplace. *See* S. Rep. No. 105-190, at *1-2 (1998). Moreover, as this case makes clear, the
DMCA's anti-circumvention provision would be a dead letter if pirates could escape liability by

26 ⁶ Defendants chose not to inform the Court of these two published Northern District cases, both
27 of which reject Defendants' argument that the DMCA only applies to conduct that takes place
28 "wholly" within the United States. Defendants rely instead on an unpublished district court case
that contains exactly one sentence regarding extraterritoriality of 17 U.S.C. § 1202, which is not
at issue.

1 512(f), which prohibits takedown notices that contain misrepresentations. Judge Spero concluded
2 that notwithstanding the presumption against extraterritoriality, the plaintiffs' claims were
3 cognizable because "key elements of the cause of action were performed in California." *Steiner*,
4 82 F. Supp. 3d at 1027-28.

5 Although *Geller* and *Steiner* concerned § 512, their analytical framework and harmonious
6 rejection of Defendants' position are instructive on the question of whether Synopsys' claims
7 entail a proper domestic application of § 1201(a)(1) to circumventions initiated and completed
8 within the U.S., "even if other conduct occurred abroad." *RJR Nabisco*, 136 S. Ct. at 2101.

9 **1. The "Focus" of § 1201(a)(1) is Circumvention of Access Controls, Which**
10 **Ubiquiti Admits Doing From Within the U.S.**

11 Section 1201(a)(1)(A) prohibits "circumventing a technological measure that effectively
12 controls access to a work protected under [the Copyright Act]." When Congress passed §
13 1201(a)(1), it created a new substantive right: "the right to prevent circumvention of access
14 controls." *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 945 (9th Cir. 2010). This
15 "access control" right is distinct from the exclusive rights under §106 of the Copyright Act.
16 "Historically speaking, preventing 'access' to a protected work in itself has not been a right of a
17 copyright owner arising from the Copyright Act." *MDY Indus.*, 629 F.3d at 944. But with the
18 passage of the DMCA, copyright owners obtained a new right focused on preventing
19 unauthorized access to digital works. To frame this right in Defendants' own terms, the "final
20 completed act" that § 1201(a)(1) prohibits is circumvention of an access control measure, which
21 "culminates" when a user gains unauthorized access to a protected digital work. *See* 17 U.S.C. §
22 1201(a)(3)(B) (circumvention technology violates the DMCA if it permits a person to "gain
23 access to the work"); 17 U.S.C. § 1201(a)(3)(A) (broadly defining the phrase "circumvent a
24 technological measure" to include "avoiding" and "bypassing" access controls in order to access a
25 work); *MDY Indus.*, 629 F.3d at 945 (right created by section 1201(a) is violated when
26 circumvention technology "enables someone to watch or listen to a work without authorization").

27 Stated simply, Defendants violated the DMCA domestically when Ubiquiti employees
28 who were physically present in the U.S. accessed Synopsys' copyright protected works by

1 avoiding, bypassing, and impairing Synopsys' license key system. Forensic inspection of
2 Defendants' host computers in Taiwan may provide further evidence regarding how Defendants
3 accomplished these U.S. violations of law, assuming complete spoliation has not occurred.

4 Forensic inspection of Defendants' non-host computers is also relevant discovery
5 concerning potential DMCA violations carried out on virtual machines that may have been
6 transported to or accessed from the U.S. Synopsys disputes Defendants' current story that they
7 only installed Synopsys' software on a single host in Taiwan, because (i) Synopsys has produced
8 call-home data showing Defendants' executing Synopsys' software from U.S. IP addresses, and
9 (ii) Defendant Tsai previously stated under oath that he initially set up his personal laptop as the
10 host machine for Synopsys' software. Dkt. 35-1 ¶4. Synopsys believes that Defendants installed
11 multiple copies of Synopsys' software on multiple computers, some of which were transported to
12 and from the U.S. The parties' factual dispute on this issue highlights the need for forensic
13 discovery that will enable Synopsys to test the self-serving attorney-speak from UNIL employees
14 who state that they "do not recall" using Synopsys' software during their travels to the U.S.

15 2. Traditional Copyright Jurisprudence Regarding Cross-Border 16 Infringement Does Not Support Defendants' Position

17 The lynchpin of Defendants' extraterritoriality objection is the incorrect assertion that
18 "[u]nder *Allarcom*, there is no liability where an act is initiated in the U.S. but completed in
19 another country." Supp. Br. at 9:6-8 (citing *Allarcom Pay TV, Ltd. v. General Instrument Corp.*,
20 69 F.3d 381, 387 (9th Cir. 1995)).⁷ Defendants argue that "[b]ecause only acts of circumvention
21 that occur *wholly* in the U.S. give rise to liability under the DMCA, Defendants need not turn
22 over devices located in Taiwan." Dkt. 99 at 5 (emphasis in original). But as several courts have

23 ⁷ Defendants also miscite *Subafilms* for this proposition (Supp. Br. at 6:11-12), but it says nothing
24 of the sort. On the contrary, *Subafilms* cites with approval the following analysis from Professor
Nimmer:

25 If and to the extent a part of an "act" of infringement occurs within the United
26 States, then, although such act is completed in a foreign jurisdiction, those parties
who contributed to the act within the United States may be rendered liable under
27 American copyright law.

28 *Subafilms, Ltd. v. Mgm-Pathe Commc'ns. Co.*, 24 F.3d 1088, 1094 n.9 (9th Cir. 1994). The Ninth
Circuit expressly distinguished *Subafilms* from cases, like this one, in which "liability is not based
on contributory infringement." *Id.* at 1095.

1 recognized, the issue is not that simple. *E.g.*, *Goes*, 2016 U.S. Dist. LEXIS 13748, *7 (collecting
2 cases). Assuming *arguendo* for purposes of this motion that traditional copyright jurisprudence
3 provides the appropriate rubric for analysis of extraterritoriality of the DMCA,⁸ Defendants’
4 argument fails on its own terms.

5 Contrary to Defendants argument, “courts are split on whether the infringing act must
6 occur wholly within the United States or if the infringing act only must not occur wholly outside
7 of the United States.” *Shropshire v. Canning*, 809 F. Supp. 2d 1139, 1145 (N.D. Cal. 2011)
8 (collecting cases). Several courts have correctly declined to follow the dicta⁹ from *Allarcom* that
9 Defendants rely on, choosing instead to examine “the precise factual details of the case before it:
10 where was the illegal copy made, where was it broadcast from, where broadcast to, and so on.”
11 *Goes*, 2016 U.S. Dist. LEXIS 13748, at *7 (collecting cases). Ascertaining the “precise factual
12 details” regarding Defendants’ use and trafficking of circumvention technology via a
13 sophisticated network of domestic and foreign computers is the reason that Synopsys seeks
14 forensic discovery. Neither *Allarcom* nor any other case supports Defendants’ extreme position
15 that Synopsys may not obtain discovery regarding foreign activities that facilitated infringement
16 within the U.S. In fact, some copyright cases inherently require discovery of extraterritorial
17 conduct in order to establish liability. *See Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519,
18 547 (2013) (discussing significance of extraterritorial copying under 17 U.S.C. § 602).

19 Defendants mischaracterize the “server test,” which is of no help to them. First, the
20 server test *is not* a test for “determining the site of the alleged violation,” as Defendants argue.
21 Supp. Br. at 6:23-26. Rather, the server test is a narrowly applicable test for determining whether
22 a plaintiff has “made a prima facie case of violation of its display right” under 17 U.S.C. § 106 in
23

24 _____
25 ⁸ *Contra Geller*, 533 F. Supp. 2d at 1004 (holding that traditional copyright law was of “little
26 help” to assessing DMCA §512 extraterritoriality, since DMCA claims are not actually copyright
27 claims); *see also MDY Indus.*, 629 F.3d at 952 (noting that Congress created a distinct anti-
28 circumvention right under § 1201 that is distinct from the rights protected under 17 U.S.C. §106).

⁹ *Allarcom* was a Federal Communications Act case that did not involve any copyright claims by
the time the case reached the Ninth Circuit. The cited dicta regarding copyright is curious because
the defendant who broadcast the accused satellite transmissions, Showtime Networks, also owned
the copyrights to the transmissions and could not have infringed *its own* display rights.

1 cases involving digital image thumbnails and hyperlinks.¹⁰ *Perfect 10, Inc. v. Amazon.com, Inc.*,
2 508 F.3d 1146, 1159 (9th Cir. 2007); *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 2010
3 U.S. Dist. LEXIS 85266, *9 (N.D. Cal. 2010) (server test determines “whether digital image data
4 stored on a computer may constitute a ‘copy’ under the Copyright Act.”) (partially overruled on
5 other grounds); *see also Flava Works, Inc. v. Gunter*, 2011 U.S. Dist. LEXIS 98451, at *10 (N.D.
6 Ill. 2011) (*Perfect 10*’s holding is “highly fact-specific”); *Teespring, Inc. v. Puetz*, 2017 U.S. Dist.
7 LEXIS 35733, at *7 (N.D. Cal. 2017) (distinguishing *Perfect 10* from cases where material is
8 hosted on defendant’s own website); *Liberty Media Holdings, LLC v. Vinigay.com*, 2011 U.S.
9 Dist. LEXIS 153615, at *17 (D. Arizona 2011) (analyzing Internet extraterritoriality issue without
10 reference to server test); *Geller*, 533 F. Supp. at 1004 (same); *Steiner*, 82 F. Supp. 3d at 1017
11 (same); *Shropshire*, 809 F. Supp. 2d at 1147 (same); *Columbia Pictures Indus. v. Fung*, 2009
12 U.S. Dist. LEXIS 122661, at *30 (C.D. Cal. 2009) (same) (partially overruled on other grounds).

13 Second, the server test concerns rights under 17 U.S.C. § 106 that are significantly
14 different than the anti-circumvention right created by section 1201(a)(1). *See MDY Indus.*, 629
15 F.3d at 945 (discussing nature of new access control right); *compare Perfect 10*, 508 F.3d at 1159
16 (no copyright liability for hosting hyperlinks to infringing material because hyperlinks were not
17 “copies” of the images) *with Universal City Studios v. Corley*, 273 F.3d 429, 457 (2nd Cir. 2001)
18 (affirming DMCA injunction prohibiting hyperlinks to websites hosting circumvention
19 technology, because hyperlinks “enable[d] anyone anywhere to gain unauthorized access to
20 copyrighted movies on DVDs”).

21 Third, Defendants’ invocation of the server test is based on the logical fallacy that there
22 can be only one “situs” of infringement carried out over the Internet. *Contra Columbia Pictures*
23 *Indus. v. Gary Fung*, 710 F.3d 1020, 1034 (9th Cir. 2013) (noting that file sharing transaction
24 involved two distinct copyright violations by two different parties). Defendants’ premise is

25 ¹⁰ The Ninth Circuit defined the server test as follows: “a computer owner that stores an image as
26 electronic information and serves that electronic information directly to the user (i.e., physically
27 sending ones and zeroes over the [I]nternet to the user’s browser, is displaying the electronic
28 information in violation of a copyright holder’s exclusive display right. Conversely, the owner of
a computer that does not store and serve the electronic information to a user is not displaying that
information, even if such owner in-line links to or frames the electronic information.” *Id.*
(citations omitted).

1 wrong as a matter of law, as this case aptly demonstrates. When Defendant Tsai remotely
2 accessed Synopsys' software in the U.S. using counterfeit keys hosted on UNIL servers in
3 Taiwan, multiple DMCA violations occurred in multiple locations: Tsai circumvented access
4 controls within the U.S., while UNIL and Ubiquiti trafficked circumvention technology by
5 providing from Taiwan, and importing to the U.S., circumvention technology that facilitated
6 Tsai's access. *See Ubiquiti Networks, Inc.*, 2017 U.S. Dist. LEXIS 130070, at *23-24.

7 To the extent the server test has any relevance here, it actually supports Synopsys'
8 position. Unlike the defendant's servers in *Perfect 10*, UNIL's servers *did* "store and serve the
9 electronic information" at issue by "physically sending ones and zeroes over the Internet" to users
10 *in the U.S.* 508 F.3d at 1159. And unlike *Yandex*, which did not involve any "actual downloads
11 in the United States," here, it is undisputed that users in the U.S. connected to Defendants' servers
12 in Taiwan in order to commit the DMCA violations alleged in the SAC. *Perfect 10, Inc. v.*
13 *Yandex N.V.*, 962 F. Supp. 2d 1146, 1153 (N.D. Cal. 2013). "There is no question that providing
14 direct infringers with server space" can result in copyright infringement liability. *Louis Vuitton*
15 *Malletier, S.A. v. Akanoc Solutions, Inc.*, 658 F.3d 936, 943 (9th Cir. 2011).

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17 This case may well result in the first comprehensive judicial analysis of the extraterritorial
18 reach of DMCA § 1201(a)(1), but that analysis should take place with the benefit of a full
19 evidentiary record showing when, where, and how Defendants used and trafficked the
20 circumvention technology at issue. This important issue of first impression should not be
21 unnecessarily decided in the context of a discovery motion in which only one side has access to
22 the relevant forensic evidence.

23 V. CONCLUSION

24 For the reasons stated, Synopsys respectfully requests that the Court issue an order
25 compelling Defendants to provide the requested forensic inspection and awarding Synopsys
26 reasonable attorneys' fees incurred in bringing the instant motion to compel.

1 Dated: January 8, 2018

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